IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.165 OF 2004.

The State of Maharashtra : Appellant.

versus

Mohan Waman Chothe : Respondent

Mr.A.S.Gadkari, APP, for the State.

Mr.Milind Deshmukh for Respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd September 2004.

ORAL ORDER

1. Heard Mr.Gadkari, the learned APP for the State. This is an appeal against acquittal of the accused under Sections 408, 468 of the Indian Penal Code.

2. The accused was the secretary of the society. He was absent on duty on particular period. The office was closed. When the office was opened, it was found that cash was short by Rs.33,000/-. Thereafter the accounts was got

audited and again audited by Government Auditor and in that background of the matter the accused came to be charged for the defalcation committed by him during the period from 1.7.1981 to 30.6.1984.

3. The trial Court acquitted the accused mainly for three reasons. Firstly, though the society auditor was examined, his report was not filed in the court. Similarly, the report of the government auditor was not filed. Thirdly, the Court found that, when the accounts written by the accused were produced it was revealed that total on the particular day was in pencil and not by pen. Therefore, admittedly, the accounts were not finalised but it was rough noting. Even otherwise, nobody was examined to prove the entries in those accounts before the Court. The court also found that if the accounts were not completed, no liability could be fastened upon the accused because in the absence of final accounts, it could not be concluded that the accused had misappropriated the amount. Since these three aspects go to the root of the case and they have been rightly held in favour of the accused, no interference is called. The appeal

is dismissed.

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